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OFFICE OF PETITIONS

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

DOCKET PA1.640

Prior docket No. PA1.668FULL/640.CIP  
GROUP NUMBER OFFICE OF PETITIONS

In re Patent Application of

BECKMAN, MARK

Serial No.: 09/301,868  
Filed: 29 April 1999

For: SNACK PACKAGE ADAPTER  
FOR A BOTTLE

Group: OFFICE OF PETITIONS  
Mr. John J. Gillon, Jr.  
Senior Attorney

I hereby certify that this correspondence  
is being deposited with the United  
States Postal Service as express  
mail in an envelope

ADDRESSED TO:

Mail Stop Petition  
Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

On John E. Halamka

John E. Halamka

Dated: 28 June 2005

Palos Verdes Estates, California

BEST AVAILABLE COPY

RENEWED PETITION UNDER 37 CFR 1.137(b)  
AND REQUEST FOR RECONSIDERATION UNDER 37 CFR 1.137(b)  
IN RESPONSE TO DECISION DISMISSING PETITION TO REVIVE  
AFTER ABANDONMENT DATED 4/29/2005  
FROM FINAL ACTION DATED 3/30/2001

Honorable Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Office of Petitions: Attn: Mr. John J. Gillon, Jr.

Dear Mr. Gillon:

Responsive to the Decision Dismissing Petition, Mailed 29 April 2005, Applicant and his attorney wish to thank you for the Notice of steps to be taken after dismissal of the Petition to Revive to maintain pendency of the above identified application. I anticipate that you will find this filing more complete than the initial petition to revive.

Applicant's Attorney requests the examination of this response in an expedited manner which applicant's attorney believes the fee to be \$135.00. Authorization is hereby given to charge to Deposit account 08-0207 this fee of \$135.00, the fee for filing a petition to revive unavoidably

PA 1640 RENEWED PETITION AND RECONSIDERATION 1

6/28/2005

07/06/2005 TBESHARH1 00000048 080207 09301868

03 FC:2801 395.00 DA

07/06/2005 TBESHARH1 00000048 080207 09301868

1 FC:2452 250.00 DA

07/06/2005 TBESHARH1 00000048 080207 09301868

03 FC:2801 395.00 DA

abandoned application for a small entity in the sum of \$250.00, Terminal Disclaimer fee of \$65.00 for a small entity and any other fee due on the submission of this Response is attached hereto. Applicant's Attorney understands that other fees which might be applicable to this submission such as filing a submission after final rejection in the sum of \$385 for a small entity as well as a request for continued examination in the sum of \$385 and fully authorizes any fees whatsoever of this application to be charged to Deposit account 08-0207.

Applicant's Attorney has also attached a Terminal Disclaimer to Accompany Petition and authorizes the payment of the Terminal Disclaimer fee from Deposit Account 080207. Applicant's attorney further authorizes the payment of any fee for the filing of this Renewed Petition under 37 CFR 1.137(b) from Attorney's deposit Account 080207.

The Office of Petitions has dismissed the first petition on the grounds that I did not change my address and this caused the application to become abandoned. I respectfully transverse the conclusion of the Office of Petitions. From the time line set forth below, had the examiner correctly reacted to my written request to change the attorney of record to myself in this matter and entered my address at 21515 Hawthorne, BOTH the office action and the notice of abandonment would have been mailed to the 21515 Hawthorne address before I changed my address to the P.O. BOX 207 address. Further, even if I had entered a change of address, because the examiner did not process JOHN E. HALAMKA as the NEW attorney of record, any request submitted by John E. Halamka to change the address of the attorney of record in this matter would have been ignored as evidenced my by request for a copy of the file wrapper. The request for a copy of the file wrapper was not ignored but was not processed. Instead, my request for a copy of the file wrapper was challenged. When I submitted proof in the form of the POW I previously submitted on 1/5/01 that I was the true attorney of record, my request for a copy of the file wrapper was honored. All of this caused delay in obtaining information as to the status of the application. Upon finally obtaining status of the application I did not delay in filing a petition to revive the application. My prior attempt to determine status directly by filing a Request for Status, dated 17 March 2003 (date signed), but date printed 2001, (see Exhibit 1) was probably ignored as I was not attorney of record. I have yet to receive any reply whatsoever to my written request for status of Serial No. 09/301,868. My records show that on 3/19/04 I attempted to call Examiner MAO MAI, I reached the office and left a message but no one returned my call again probably because I was not listed as attorney of record.

The cited failure of John E. Halamka to timely enter a change of address therefore should not be considered dispositive of this case and

the petition to revive from abandonment should be reconsidered and granted.

When I, John E. Halamka, as applicant's NEW attorney contacted the United States Patent Office to obtain a copy of the file wrapper for Serial No. 09/301,868 so that I could determine the status of the application, I was concerned that I was not listed as attorney of record for the above-identified application. I faxed a copy of the Power of Attorney to the United States Patent Office. In your decision, you stated that the Revocation (of the prior power of attorney of the Venture Group)/Power of attorney (appointing John E. Halamka) submitted on 10 December 2004, hereby is acknowledged and accepted. Thank you for accepting me as the attorney of record in this matter as of 29 April 2005.

As the record shows, (from my filed response not from the file wrapper) my first submission of this same document was on 5 January 2001. However it seems it was not processed by the examiner. My second submission of the same document was on 26 July 2004 when I requested a copy of the file wrapper for the second time, the first request for a copy of the file wrapper was not honored as I was not listed as attorney of record (see Exhibit 11). This second submission was accepted as I received a copy of the file wrapper by mail postmarked 4 October 2004. (See Exhibit 2).

As per your suggestion in the decision, I have attached (see Attachment 1) a formal request for a change of address in this matter and pray it be entered to reflect the full identification of the attorney of record for Patent Application Serial No. 09/301,868 to be:

John E. Halamka  
P.O. Box 207  
Palos Verdes Estates, CA 90274  
310-316-6100  
Fax 310-541-8290  
Email - [halamka@usc.edu](mailto:halamka@usc.edu)

Applicant's NEW attorney of record hereby respectfully submits that he has attempted to reconstruct the entire time line and history of this application to the best of his ability and sets forth that history as true and correct with supporting documents that can be found.

A complete investigation of why this application became abandoned is still not positively clear and part can only be left to reasonable speculation, especially why the examiner did not process the Power of Attorney submitted 1/5/2001 and enter JOHN E. HALAMKA as the attorney of record or give any notice of non-recognition. The

examiner obviously received the power of attorney and found it acceptable as he reviewed my 1/5/2001 response and issued an office action based upon that response. Had I not provided a document authorizing myself to be the new power of attorney, I understand that such a document would be ignored. However, it is this office action to my response to my 1/5/2001 that was not mailed to my office as requested and caused the application to become abandoned.

The application was file on 29 April 1999 by the Patent Law & Venture Group, Suite K 105, 3151 Airway Avenue, Costa Mesa, CA 92626. The first communication by the examiner required election of claims which was completed by the Patent Law & Venture Group. The next communication was an office action dated 7/5/00. The Patent Law & Venture Group mailed a Notice of Examination Status to the applicant on July 13, 2000 (A COPY OF WHICH IS ATTACHED AS EXHIBIT 3). The Applicant asked this office to take over the file and respond to the office action dated 7/5/00. I prepared a substitution of attorney for the applicant to sign, mailed it to him with instructions to sign and return. I received the signed substitution of attorney as indicated in the billing to applicant. (A COPY OF WHICH IS ATTACHED AS EXHIBIT 4)

At the request of the applicant under power of attorney, I responded to the Office Action dated 7/5/00, a copy of the post card receipt for that response is attached as Exhibit 5. This card was not previously submitted as it had been filed in the PCT folder for this application instead of the U.S. Application folder for the application. The post card only lists the filing of the RESPONSE but does not list what was included in the response. However, the RESPONSE expressly states that it is being filed by a NEW attorney JOHN E. HALAMKA and expressly requests the examiner enter the change of name and address listed on the enclosed substitution of attorney and power of attorney to John E. Halamka, 21515 Hawthorne Blvd. Suite 590, Torrance, CA 90503. (A copy of the first page of my 5/1/05 response obtained from the file wrapper of this application, not from my files, is attached as Exhibit 6). Kindly note on this first page that the Response to Office Action is address to Examiner MAO MAI.

MISSING FROM THE COPY OF THE FILE WRAPPER I RECEIVED FOR THIS APPLICATION IS THE Substitution of Attorney I filed with the RESPONSE dated 1/5/2001 to Office Action dated 7/5/00. This is where I can only surmise that Examiner MAO MAI received it as he would not have considered MY RESPONSE had it not been accompanied by the proper Substitution of Attorney. The record indicates that Examiner MAO MAI did process my 1/5/2001 RESPONSE and issued an office action acknowledging the response dated January 5, 2001 (the

response filed by this office). A copy of the first and last page of the Office action is attached as Exhibit 7.

The Substitution of Attorney was certainly filed with my response on 5 January 2001 as I worked very diligently to prepare, send it to the client and follow up with the client to sign and send it back as demonstrated by my letter requesting the return of the power of attorney and increased fee for delayed response by 5 January 2001 as corroborated by a billing during the period of preparation of the RESPONSE to paper 5 and my inability to file the response without the signed power of attorney. (See again Exhibit 4)

The law office from whom I rented space for 15 years at 21515 Hawthorne renewed their lease near the end of 2001. During the negotiations, the firm elected to decrease their space but still had enough space for my office. However, I would have to pack up all of my office at one end of the space and move to the other end. At first I intended to stay but as I packed up and checked my calendar, I had only met with two clients in the office during the prior year. Most of my transactions with my clients are my mail, email or phone. Therefore, I made the election in December 2001 to simply move my office to a home office, cut the overhead and travel time. I submitted change of address cards to the U.S. Postal Service in December 2001. I understand the rules of the U.S. Postal Service to be the maintenance of a forwarding service for one year. Therefore, I should have received mail addressed to 21515 Hawthorne until at least December 2002.

Initial Delay resulting in abandonment.

The paper in question, paper 7, an office action mailed 03/30/01 by Examiner MAO MAI should have reached me either directly from Examiner MAO MAI if the examiner had honored my request to take note of my office address as a NEW representative for the applicant supported by an executed power of attorney and my express reminder in the Response to the examiner to update the records of the Patent Office to reflect my Office name and Address as attorney of record for application serial No. 09/301,868 or indirectly through the Patent Law & Venture Group. Unfortunately, without my fault or the fault of the applicant, my request was not honored by Examiner MAO MAI compounded by my non-receipt of a forwarding of the 3/3/2001 Office Action from the Patent Law & Venture Group resulting in the UNAVOIDABLE abandonment of the application. I did all I that was required to do. The Applicant should not loose his rights because Examiner MAO MAI failed to process the change of address of NEW attorney of record and mailed the office action to the OLD attorney of record Patent Law & Venture Group (See Exhibit 8). The notice of abandonment dated 11/06/01 was also mailed to the

Patent Law & Venture Group but NOT BY Examiner MAO MAI (See Exhibit 9). It was mailed by his supervisory patent examiner Mr. MILTON I. CANO. The Patent Law & Venture Group has no record of receiving the notice of abandonment so it was not forwarded to my office. At some time in this process, Examiner MAO MAI left his employment with the United States Patent and Trademark Office.

I respectfully allege that both the office action and the notice of abandonment would have reached me at my 21515 Hawthorne address before I physically left that address on 4 January 2002 and if delayed in the mails certainly would have been delivered according to my change of address filed with the Post Office Change by December 2002.

I set forth my first contact with the Patent Law & Venture Group in my initial petition to revive. In that inquiry I was informed that they did not receive the Office Action. However on 25 May 2005, I contacted Mr. Scott directly, the agent employed by the Patent Law & Venture Group to write the initial patent application to again confirm their non-receipt of the Office Action. The information I obtained during this second contact was different than the information I obtained in my first contact about a year ago. Mr. Scott accesses their calendar/document data base and verbally confirmed to me that the Patent Law & Venture Group **DID** receive the Office Action dated 3/30/01 as someone had opened their data base and found the application was not "an active" file in their office. This person made an entry into the data system of receipt of an office action, but because it was not an active file "marked the office action with and X" and directed the paralegal to forward the office action to my office.

My office was still active and located at 21515 Hawthorne Blvd., Suite 590, Torrance, CA 90503. I did not receive the forwarding of the office action from the Patent Law & Venture Group. **BUT MOST SIGNIFICANTLY**, had my submission on 5 January 2001 of a power of attorney been processed by the USPTO, my address entered into the application as attorney of record, I would have received the office action DIRECTLY.

The Patent Law & Venture Group does not have any record of receiving the Notice of Abandonment mailed 11/16/01.

**AGAIN MOST SIGNIFICANTLY**, had my POW submitted 5 January 2001 been correctly processed to change the name and address of the NEW attorney of Record for the application, I would have received the NOTICE OF ABANDONMENT at my office located at 21515 Hawthorne Blvd., Suite 590, Torrance, CA 90503.

**I DID NOT PHYSICALLY CHANGE MY ADDRESS UNTIL AFTER 1 JANUARY 2002.** I paid rent to my landlord at 21515 Hawthorne through December 2001 (a copy of the check book recorder sheet is attached hereto as Exhibit 10).

I did not obtain a P.O. Box until 14 February 2002, (See Exhibit 11), a copy of my check record of first payment of rent for the P.O. Box Number 207, Palos Verdes Estates, CA 90274.

It is this fact that I seemed not to make absolutely clear in the original petition to revive, or clear to myself, leading to my attempting to find an excusable reason or why the patent was "inadvertently" abandoned and not unavoidably abandoned. The true facts are, I did everything I could to notify the examiner of the change of address for the NEW attorney of record but the examiner failed to process my request to change the address without notifying me of any reason to not honor my request.

From December 2001 to at least February 2002 I started changing by mailing address (some to the P.O. Box 207 after 14 Feb. 2002) and before that I changed most of the publications and bills to 3005 Via Borica, Palos Verdes Estates, CA 90274. (See Exhibit 12, a copy of my paralegal's excel file tracking progress of the change of address process). I intensely worked on changing my address to P.O. Box 207, Palos Verdes Estates on all of my Trademark and Patent soon after 14 Feb. 2002.

My former law office address at 21515 Hawthorne cooperated with me to continue to receive my mail, segregate it from other mail to the office, and I would stop by at first every day to pick up my mail and then less frequently as the address for the publications and other mail slowly was changed.

**Delay in filing initial Petition to Revive.**

On 4 May 2004 I filed a request for status for Patent Application Serial number 09/301,868; a copy of the post card receipt for that request is attached as Exhibit 13. My request for status was not present in the file wrapper. As I was not listed as attorney of record, my request for status my have been ignored. However, I was not informed that it had been ignored and therefore could not take any corrective action as I did in my subsequent request for a copy of the file wrapper.

As a parallel activity to my prosecution of the U.S. Patent Application Serial No. 09/301,868, my client authorized me to file a PCT application based on the U.S. application. This PCT application was filed

on 27 April 2000 as International application no. PCT/US/11269, from my address at 21515 Hawthorne Blvd. Suite 590, Torrance, CA 90503 as original Attorney of Record.

The Notification of Transmittal of the International Search Report was mailed to my office at 21515 Hawthorne Blvd., Suite 590, Torrance, CA 90503 dated 31 July 2000 by Authorized Officer MAI HAO, a copy of this mailing is attached as Exhibit 14.

I am not familiar with the internal policies and workings of the USPTO but in my practice, I have observed that the same examiner that is appointed to the U.S. application is also appointed to the PCT application.

The point being that as the exact same examiner on the exact same subject matter for PCT/US00/11269 would use my address at 21515 Hawthorne Blvd to send the International Search Report for the PCT application on 31 July 2000 I would seem to have a reasonable expectation that the same examiner when processing paper 7, dated 3/30/2001 for application 09/301,868 may have noticed an issue with an address inconsistency. This may be a totally unwarranted expectation considering the volume of work the examiner must process and the timing of the leaving of employment of MAI HAO at the USPTO. Thus it is not presented as justification but only as a point to consider.

Further as an indication of a problem with the US and the PCT files as processed by the USPTO, I filed a Response to Written Opinion for PCT/US00/11269 on 2 June 2001, a copy of that response and post card receipt is attached as Exhibit 15. This response was not in the copy of the file wrapper requested below which would explain why I did not receive any reply to my requests to modify the application.

I filed a request for Status for PCT/US00/11269 on 4 May 2004 as shown by a copy of the request and the Post Card receipt dated 11 May 2004 is attached as combined Exhibit 16. Please note that I had submitted a request for address change to P.O. Box 207, Palos Verdes Estates, CA 90274 included in that document which was forwarded to the international Bureau of WIPO on 7 Jun 2004. BUT I NEVER RECEIVED ANY REPLY WHATSOEVER TO MY REQUEST FOR STATUS.

My First request for a copy of the file wrapper for 09/301,868 was made on 12 July 2004 by fax. The request was denied because I was not the attorney of record even though I responded to paper 5 and expressly requested my office be made the attorney of record. (See Exhibit 6) This probably explains why my request for status filed 4 May 2004 (see



Exhibit 13) was not honored or even sent back to me with an explanation of why the request could not be fulfilled.

The above request for the file wrapper for 09/301,868 contained a request for the file wrapper for PCT/US00/11269. The PCT file wrapper was sent to me as order 1205737, postmarked August 27, 2004. (See Exhibit 17).

The denial, dated 7/14/04, of my request for the file wrapper for 09/301,868 (see Exhibit 18 gives evidence that had I submitted a change of address request it would have been ignored or not accepted. Therefore, the dismissal of my petition on the grounds that I had not submitted a change of address should be reversed as requiring the performance of an action that was IMPOSSIBLE.

My second request for a copy of the file wrapper for 09/301,868 was dated 26 July 2004 and faxed to 703-308-7948. Attached to the request was a copy of the Declaration and Power of Attorney signed by Applicant, Mark James Beckman, the same document filed with my response dated 5 January 2001. A copy of this second request is attached as Exhibit 19 which includes a FOLLOW up request after 9/9/04 and notice of problem in filling the request in response to my follow up fax. Again, a delay in obtaining any information about the status of 09/301,868 not in my control.

#### Change of Address:

According to my paralegal billing sheet my desk was moved from 21515 Hawthorne on 1/4/02 and my office started working on change of address for my trademark and patent files at least as early as 1/14/02. (See Exhibit 20) I attempted to find the forms or ability to file electronically. I filed my change of address for registered attorneys and agents on 24 January 2003 (see Exhibit 21).

I continued to have my paralegal compile the paper request for change of correspondence address, PATENT, for my active files. I found my copy of the stack of requests. To my disappointment and surprise, no change of address was filed out for my client Mark J. Beckman. On double checking my list of active files against submitted change of address requests, Mr. Beckman's application Serial No. 09/301,868 is the only client left out this effort. However, as pointed out above, even if I had submitted a change of address for the application in the name of Mr. Beckman in this effort, such an effort would have been ignored as I was not listed as attorney of record and the same result of unavoidable abandonment of the application would have resulted.

According to the decision on my Petition to Revive Mr. Beckman's application, my STATUS as attorney of record for Application Serial No. 09/301,868 was not entered until 29 April 2005. I respectfully submit that any request to change address before 29 April 2005 I would not have been honored.

RESPONSE TO BACKGROUND (in the DECISION mailed April 29 2005)

- "Petitioner failed to reply timely and properly to the non-final Office action mailed on 30 March, 2001, ..."

THIS ACTION WAS LABELED FINAL and addressed to the Patent Law & Venture Group instead of my office as requested in my 5 January 2001 Response to office action, see Exhibits 6 and 7. I have reviewed all of the rules and regulations relating to a proper response to a FINAL action. One of the choices is to file a CIP but it also requires a request to continue examination. It may be this lack of RCE that your office finds not "proper". If this is the only portion of the response that is not proper, I respectfully traverse the conclusion and contend that the body of the response –

"Applicant's attorney respectfully requests the filing of the Continuation in Part with the priority of the original patent application pending its successful revival.

Upon consideration of the above remarks, the applicant respectfully believes that the application will be found in condition for review and such review is respectfully solicited."

pointing out that I am filing a response in the form of a CIP in place of the pending application and pray for a finding that the CIP is now in a condition for review and requesting such review coupled with the payment of the petition fee and any other fees deemed to be due for the filing in the petition meets the requirements intent for the RCE as set forth in MPEP Section 711.03(c).

An amended response attempting to expressly meet the requirements of Section 711.03(c) is attached hereto (see Attachment 2) and acceptance of this amended response is respectfully requested.

I can state with an absolute certainty that the entire delay from the date the office action was mailed on 3/3/01 until the filing of the first petition to revive from abandonment for failure to respond to that office action on 10 December 2004 was UNINTENTIONAL on the part of applicant and his new attorney of record, John E. Halamka.

- “the instant application went abandoned after midnight 30 June, 2001;”

The Office action was not received directly in my office from the USPTO or indirectly through the Patent Law & Venture Group. Had it been received, I certainly was authorized by the applicant to timely respond and would have rather than allow the application to go abandoned.

- “the office mailed a Notice of Abandonment on 6 November 2001:”

The office mailed the noticed of Abandonment to the Patent Law & Venture Group according to the address on the Notice but the Patent Law & Venture Group does not have a record of receipt of the notice. Had they received it, they would have mailed it to my 21515 Hawthorne Blvd. address as the claim they mailed the Office action. The notice of abandonment should have been mailed to my 21515 Hawthorne Blvd. address per my request submitted 5 January 2001.

Had I received the notice of abandonment, I certainly would have immediately replied to the notice rather than allow an application of my client go abandoned. I also respectfully contend that had the Patent & Venture Group received the notice of abandonment for failure to respond to the office action, they would have made an effort to confirm that the abandonment was intentional and not unintentional. At least that is what I would have done for any such application I have assisted to insure the protection of the applicant's rights.

- “although Petitioner discusses activities alleged to have occurred dating back to January 2001 through the filing of the instant petition on 10 December 2004, there is no evidence of record that indicates that Petition Noticed the Office with a Revocation/Power of Attorney Prior of 10 December 2004- contemporaneously with the filing of the instant petition;”

I submitted the “Revocation/Power of Attorney” first on 5 January 2001; see Exhibit 6 with my response acknowledged in Exhibit 7.

I submitted the “Revocation/Power of Attorney” for a second time on 26 July 2004 with my second request for a copy of the file wrapper for 09/301,868. See Exhibit 19.

- “in fact, the instant petition recites: “I suspect that because I was not Attorney of record for 09/301,868, my request to change (the address of record in the application] was not honored”;

This was a guess based upon my good faith belief that I had actually submitted a change of address for all of my patent files after I obtained the P.O. Box as I continued to work on verification of the change of address by updating my data base from at least 14 February 2002 to the present. My large stack of change of address forms mailed to the USPTO failed to support my belief. Somehow, this seems to be the one and only file that was not included in that large stack. However, as set forth above, my request to substitute me as attorney of record and express request to change of address to 21515 Hawthorne Blvd. was not honored even though supported by a power of attorney (which seems to have been disregarded and not even made a part of the file wrapper. However, the examiner did acknowledge my filing and did examine my response and issue an office action based on my response. Had my original change of address (1/5/2000) been honored and the office action mailed to my 21515 Hawthorne address as requested, I submit this entire activity to revive the application unintentionally abandoned would not have occurred.

- “Petitioner provides no documentary evidence, such as date-stamped receipt cards (see: MPEP Section 503) to support allegations as to any filings – including Requests for Status;”

I had presumed that the requests for status for 09/301,868 and the companion PCT application PCT/US00/11269 were of record with the USPTO. Upon examination of the file wrapper for 09/301,868 I find my request for status MISSING from the file wrapper. I did find my request for status for PCT/US00/11269 in the file wrapper but I have not received any response whatsoever to that request for status. (See Exhibits 13 and 16).

- “moreover, as of this writing Petitioner provides no sufficient basis for waiting almost 43 months to act to revive the instant application: and”

I anticipate that my dialogue herein tracing work on the companion filing of the PCT with responses from examiner MAI MAI which gave me evidence that work was in process for the U.S. application 09/301,868 and my efforts starting 7 May 2004 to obtain status which was DELAYED because I was not listed as attorney of record sufficiently explains much of the activity during the 43 months to satisfy the requirement to justify the withdrawal of the notice of

abandonment and a finding of revival of the application on the basis that much of the delay was unavoidable due to the difficulty in determining the status of the application.

- “While Petitioner suggests at one point in the petition and the Power of Attorney submitted directs that his office address is as listed at the top of this decision, he indicates at another that his address P.O. Box 207, Palos Verdes Estates, CA 90274 – however, there is no indication that a formal Notice of Change of Address has been filed of record herein, and Petitioner must cure that deficiency;”

Please see Attachment 1, a formal request to change my address for 09/301,868. Again, had I submitted it before your entry of my POW on 29 April 2005, any prior request to change my address would have been ignored.

- “Petitioner acknowledges that his response is to a final Office action, however, his reply is not a proper reply as submitted with the instant petition to a final office action and Petitioner is directed to the regulations at 37 C.F.R. Section 1.14.”

Please see Attachment 2, a supplemental response containing authorization to pay the fees for a request for continued examination for the CIP filed based on 09/301,868.

- “Petitioner styles his petition as one alleging “unavoidable delay” to be considered under 37 C.F.R. Section 1.37(a), and buries within the paper what appears to be an alternative plea for relief under the provisions of 37 C.F.R. Section 1.37(b) – i.e. alleging unintentional delay – and Petitioner is directed to the regulations at C.F.R. Section 1.4(d);”

As stated in the above dialog, I did not properly analyze the time line of submission of the POW with request to change the attorney and address of record or 0/301,868 and the incorrect processing of that request so that the office action of 3/3/01 was mailed to the initial attorney of record. This I was searching for some other reason to justify the actions taken in the application. I knew that I had no intention to unavoidably delay a response so I looked for some reason that would support unintentional delay. (Frankly, the concepts still are not fully clear in my mind as there seems to be some overlap and gray area in the definitions)

A Terminal Disclaimer (with fee) to accompany petition is enclosed as Attachment 3. As Petitioner is not all that familiar with the calculation of the term of the terminal disclaimer he at least believes the maximum term should be from the date of the abandonment, 6/30/01 to the first attempt to obtain status in this matter, 4 May 2004, a period of 34 months and 16 days.

- "Petitioner suggests but does not support allegations to be considered as a request to withdraw the holding of abandonment under 37 C.F.R. Section 1.181."

Applicant's Attorney hereby expressly request the withdrawal of the holding of abandonment and a finding that this supplement to Petition to Revive is sufficient to render a finding that the application is entitled to be revived.

I do thank you for considering the petition as poorly conceived as it is and your entering myself as attorney in record in the matter. As you point out, the address associated with myself under the power of attorney you have accepted reflects my former address of 21515 Hawthorne Blvd. and must be changed to my new P.O. Box 207 address. I have enclosed a formal request to change my address for Application Serial No. 90/301,868 and respectfully request it be entered.

I received your decision dated 29 April 2005 denying my prior petition and immediately started this supplemental response. It has taken over 35 hours to compile the information, exhibits and write an understandable petition. I have filed the petition before the two month deadline.

I anticipate the activity set forth to obtain status, a copy of the file wrapper, file an initial petition and now a supplemental petition demonstrates sufficient activity on my part in the "43 "months between the mailing of the office action and the filing of this supplemental petition to qualify for due diligence in the prosecution of this application to qualify for consideration to revive the application from abandonment.

Enclosed are:

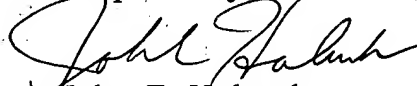
1. UPDATED Response to Office action dated 3/30/01
2. Terminal Disclaimer
3. Request to change address

As this response is filed within the two months from the mailing of the Decision Dismissing Petition, applicant's attorney believes that no additional fees are due other than a new petition fee and the fee due for my request for priority processing of the renewed petition. However, applicant's attorney authorizes any other fees found to be due to be charged to Deposit Account 08-0207.

In case the examiner finds the application is not yet in condition for allowance, applicant's attorney respectfully requests immediate notification of any deficiency to which applicant's attorney will immediately respond to correct such deficiency, if any.

Timely notice of allowance of this application is hereby respectfully requested.

Respectfully submitted,



John E. Halamka  
Attorney of record

EX. 1



IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

In re Patent Application of

GROUP NUMBER 1761

BECKMAN, MARK J.

Serial No.: 09/301,868

Filed: 04/29/1999

For: SNACK PACKAGE  
ADAPTER FOR A  
BOTTLE

Group: 1761

Examiner: HAO MAI

I hereby certify that this correspondence  
is being deposited with the United  
States Postal Service as first  
class mail in an envelope

ADDRESSED TO:

Assistant Commissioner of Patents  
and Trademarks, Washington,  
D.C. 20231On 17 March 2003

John E. Halamka

Dated: 17 March 2001

Torrance, California

RECEIVED

JUL 07 2005

OFFICE OF PETITIONS

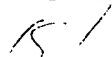
## REQUEST FOR STATUS

Honorable Assistant Commissioner of Patents and Trademarks  
Washington, D. C. 20231  
Attn: Art Group 3724

Dear Assistant Commissioner:

This office is attorney of record for the applicant. As we have not had any correspondence after the filing the response to Paper 5, we respectfully request notification of the status of the examination of the application.

Respectfully submitted,



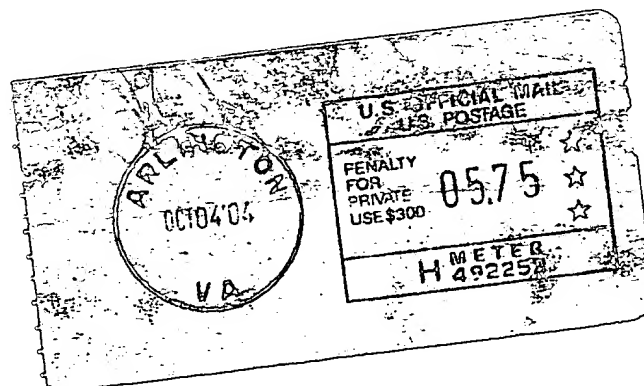
John E. Halamka

EXHIBIT 1

EX. 2

FROM: U.S. Patent and Trademark Office  
Box 9  
Washington, DC 20231

TO: LAW OFFICES  
JOHN E. HALAMKA  
P.O. BOX 207  
PALOS VERDES ESTATES, CA 90274  
USA



Ex. 3

Notice of Examination Status  
(Utility Application)

DATE: July 13, 2000

DOCKET #: Beckma.M-1

TO: Mark J. Beckman  
4288 Klump Ave  
Studio City, CA 91602

APPLICATION NO.: 09301868 TITLE: Snack Package Adapted For A Bottle

We have received notice in the above application from the United States Patent Office. Status is as follows: claims 1-17 are pending in the application, claims 1-9 were withdrawn in accordance with your election and, after initial examination, claims 10-17 are provisionally rejected under obviousness and/or anticipation arguments with respect to combinations of the prior art references to Brauner et al, Barnes and LaBarbera. Initial rejections are common when a PTO search uncovers art which the Examiner believes is relevant to the case and therefore requires further perspective evaluation relative to the claimed subject matter. Certain informalities cited by the Examiner can be corrected without difficulty, but an initial review of the rejecting art indicates that it may be difficult to overcome this rejection. However, it is clear to me that the differences in structure between the rejecting art and the instant invention are not merely a matter of design choice, but of solid invention for purposes of import. Addition of further matter would improve your case.

1. If you wish, we will proceed with revisions to the text, claims or drawings of the application necessary to defend your case. This response will then be submitted to the PTO for their further evaluation. Our prepaid fee for this work is \$525. There is no PTO fee required for this action. If conference time in our office is necessary it will be billed separately. Our projected turn-around time for defensive responses is about four weeks after receipt of your order to proceed.
2. If you have new invention modifications which fall within the scope and objectives of the existing application, now is the time to let us know so they may be included.
3. If you have further revisions or improvements, which fall outside the scope and objectives of the present application you may wish to file a "Continuation In Part" (CIP) application to protect these improvements. If you elect to file a CIP you may drop the present case, or not, at your discretion. The CIP application will protect the original filing date for those portions which are taken from the present application. A CIP must be filed before the present case is issued or abandoned. Our fee for preparation of a CIP generally falls between \$900 and \$2295 depending upon how extensive the additional material is. This option requires a PTO fee of \$370.

**Please note that if a response to the above action is not taken within about 10 weeks, the application will be considered abandoned by the U.S. Patent & Trademark Office.**

Respectfully,  
Gene Scott, Registered Patent Agent



EX. 4

LAW OFFICES  
JOHN E. HALAMKA

21515 HAWTHORNE BOULEVARD, SUITE 590  
TORRANCE, CALIFORNIA 90503  
(310) 316-6100  
FACSIMILE: (310) 543-4507  
EMAIL: [halamka@usc.edu](mailto:halamka@usc.edu)

~~December 5, 2000~~

Mr. Mark James Beckman  
4288 Klump Ave.  
Studio City, CA 91602

Re: RESPONSE TO  
US OFFICE ACTION

Dear Mark:

Please find enclosed a draft of the response to the US OFFICEW ACTION. Because I did not receive the substitute of attorney/power of attorney to represent you on or before 5 December, it was not filed.

I will continue to work on the response to draft arguments against the cited art to better prepare the response. It took more effort than anticipated to correct the writing of Mr. Scott to try to overcome the objections raised by the examiner..

Kindly forward the power of attorney and increased filing fee at your earliest convenience but no later than:

5 JANUARY 2001

If the response is filed after 5 January, the fee increases another \$250.00.

Please find enclosed a copy of the PCT application. As I did not have the changes made in the U.S. Office response to file with the PCT Demand for Chapter II, I will have to incorporate the changes at another appropriate time.

Sincerely,

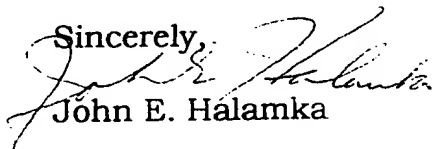
  
John E. Halamka

EXHIBIT 4

Law Offices of John E. Halamka  
21515 Hawthorne Blvd. Suite 590  
Torrance, CA 90503

Invoice submitted to:  
Mr. Mark James Beckman  
4288 Klump Avenue  
Studio City CA 91602

December 05, 2000

In Reference To: filing of PCT application written by another firm

Invoice # 10037

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/24/00 Review U.S. Patent filing for SNACK PACKAGE ADAPTED FOR A BOTTLE and recomend actions for PCT filing. .5hr N/C Write letter recommending actions and retainer for direction. .7 n/c	1.20 210.00/hr	NO CHARGE
4/26/00 Prepare Retainer agreement and transmittal papers for PCT Request.	1.80 210.00/hr	378.00
consultation regarding protection of intellectual property rights by PCT filing and marketing of device	1.00 210.00/hr	210.00
4/27/00 Prepare Prior U.S. Federal Patent application for PCT filing	1.20 210.00/hr	252.00
6/26/00 T/C PTO re extension of time to respond to notice to correct deficiencies in format of PCT application, confrim extension and place spec and claims in order on A size paper, inform client and prepare patent draftsman to respond to request.	1.90 210.00/hr	399.00
11/29/00 Prepare and file Response to US examiner and pay one month extension fee of \$55	2.70 210.00/hr	567.00
11/30/00 Prepare DEC and POW for response to PA Office Action for US filing by another office.	0.20 210.00/hr	42.00



	<u>Hrs/Rate</u>	<u>Amount</u>
--	-----------------	---------------

12/1/00 Prepare response to PA Office Action for US filing by another office. Included redo of spec and claim 10 and the claims dependent thereon to overcome "adapted" written by original attorney. Can use all of this work for the generation of substitute pages for the PCT.	5.00 210.00/hr	1,050.00
---	-------------------	----------

12/5/00 Review office action, update claim 10 and dependent claims, draft arguments against cited prior art in preparation for filing. <del>DID NOT</del> <del>RECEIVE POWER OF ATTORNEY SO CANNOT FILE RESPONSE.</del>	2.10 210.00/hr	441.00
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For professional services rendered	17.10	\$3,339.00
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## Additional Charges :

4/27/00 PCT filing fee for filing copy of U.S. Patent		1,853.00
---	--	----------

		25.00
--	--	-------

6/19/00 Certified copy Issued to international searching entity for PCT		15.00
---	--	-------

Express mail response to notice to correct format issues in PCT filing		25.00
--	--	-------

7/12/00 Order FORMAL Drawings due Upon filing for PCT, review, and respond to PTO draftsman office action.		1,200.00
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11/6/00 CHAPTER II DEMAND fee due before end of 19th month after priority date.		825.00
---	--	--------

12/5/00 Additional fee for extension of time as did not receive power of attorney by 5 December so had to extend response into fifth month at additional fee of \$140.00.		140.00
--	--	--------

Total costs		\$4,083.00
-------------	--	------------

Total amount of this bill		\$7,422.00
---------------------------	--	------------

4/27/00 Payment - Thank You		(\$3,200.00)
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6/30/00 Payment - Thank You		(\$1,200.00)
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11/20/00 Payment - Thank You		(\$782.00)
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Total payments and adjustments		(\$5,182.00)
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Balance due		\$2,240.00
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EX. 5

This hereby acknowledges receipt of a response to  
office action, authorization to change depositor act.  
in duplicate, and an express mail filing receipt

CLIENT: Beckman

DOCKET: 1761

JAN 05 2001

EX. 6

INT & TRADE

GROUP NUMBER 176

I hereby certify that this correspondence was deposited with the United States Postal Service as Express mail in an envelope ADDRESSED TO: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on \_\_\_\_\_

envelope ADDRESSED TO:  
Commissioner of Patents  
and Trademarks, Washington,  
D.C. 20231 on \_\_\_\_\_

envelope ADDRESSED TO:  
Commissioner of Patents  
and Trademarks, Washing  
D.C. 20231 on \_\_\_\_\_

envelope ADDRESSED TO:  
Commissioner of Patents  
and Trademarks, Washington,  
D.C. 20231 on \_\_\_\_\_

John E. Halamka  
Dated: 5 January 5, 2001  
Torrance, California

John E. Halamka  
Dated: 5 January 5, 2001  
Torrance, California

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JAN 11 2001  
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EXHIBIT 6

ex. 7

☒ Responsive to communication(s) filed on Jan-5, 2001.

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims**

☒ Claim(s) 10-17 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 10-17 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1761

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to ~~Harold~~ Mai, whose telephone number is (703) 306-9171. The Examiner can normally be reached on Monday-Thursday from 8AM-4:30PM.


If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Milton Cano (703)308-3959.

The fax phone number for this group is (703) 305-3599 or 305-7718.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

~~Harold~~ hm

Patent Examiner/ Art Unit 1761

  
MILTON CANO  
PRIMARY EXAMINER  
Gra 1761



EX. 8

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/301,868 04/29/99 BECKMAN

M BECKMA.M-1

PATENT LAW & VENTURE GROUP  
SUITE K 105  
3151 AIRWAY AVENUE  
COSTA MESA CA 92626

IM22/0330

EXAMINER
----------

MAI, H

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED:

03/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

EXHIBIT 8

EX. 9



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/301,868 04/29/99 BECKMAN

M BECKMAN, M-1

EXAMINER

IM52/1106

PATENT LAW & VENTURE GROUP  
SUITE K 105  
3151 AIRWAY AVENUE  
COSTA MESA CA 92626

MAT. H  
ART UNIT

PAPER NUMBER

1761  
DATE MAILED:

11/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

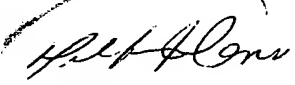
EXHIBIT 9

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 3/30/01.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☒ No response has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance.
  - (b) ☐ The submitted issue fee of \$ \_\_\_\_\_ is insufficient. A balance of \$ \_\_\_\_\_ is due.

The issue fee required by 37 CFR 1.18 is \$ \_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d) is \$ \_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file new formal drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed new formal drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ The proposed new formal drawings filed on \_\_\_\_\_ are not acceptable and the period for reply has expired.
  - (c) ☐ No proposed new formal drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

  
MILTON L. CAWD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

EX. 10

TRANSACTION CODES: ATM-ATM Transactions, EC-Express Card Purchase, BP-Bill Payment, D-Deposit.

DATE	CHECK NO. or CODE	TRANSACTIONS CONFIRMATION NUMBER	TAX DEDUCT CODES	AMOUNT	✓	DEPOSIT AMOUNT	BALANCE
3/19/01	3088	BPA Books		95 -	✓		795 69
		Patent Book					700 69
		DEPOSIT				✓ 1000 -	7700 69
3/24/01	1000 + 816.12	<del>DEPOSIT</del>		118 85	✓		7581 84
		DEPOSIT		20 -	✓	(1625)	9206 84
4/5/01	3089	Transp. Ins.		1605 00	✓		2994 61
4/6/01	3090	Emitt. Crd.		6222 23	✓		1724 11
				1260 50	✓		

4/16/01	3091	Factory		120 -	✓		1604 11
	3092	Apr & May 2001					
		<del>Electric</del>		121 50	✓		1482 61
4/28/01	3093	VERIZON		106 20	✓		1276 41
4/28/01	3094	VERIZON		137 99	✓		1038 42
5/7/01	3095	Basic Sav. 1142 42		Δ = 104			
		DEPOSIT				✓ 1500 -	2538 42
	3095	Small Crum Robert Plunk		1229 60	✓		1308 82
		MAY Rent					

Get cash and pay for purchases with your Wells Fargo Express® Card.

EXHIBIT 10

DATE 10/2

CUST XXX

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AMOUNT

TO:

THAN

TRANSACTION CODES: ATM-ATM Transactions, EC-Express Card Purchase, BP-Bill Payment, D-Deposit.

DATE	CHECK NO. OR CODE	TRANSACTIONS CONFIRMATION NUMBER	TAX DEDUCT CODES	AMOUNT	✓	DEPOSIT AMOUNT	BALANCE
	3134	Coors <del>Beer</del>		15.00 54			1808 21
							1794 51
	3135	2 HOLLANDER En Engraving		106 39	✓		1688 16
	3136	Rent - 1000 RENT		216 45	✓		1461 71
	3137	Acc		60 -	✓		1401 71
		Dec 2001					
10 Dec 01	3138	VCM 2001 1		60 90	✓		1340 81
	3139	VENIZOU		124 80	✓		1274 91
	3140	<del>Coors Beer</del>		119 25	✓		1160 76
	3141	<del>Coors Beer</del>					
		153 + 50		203 -	✓		957 76
	02	<del>Coors Beer</del>		94 -	✓	AMER	23
		Fees		14			943 98
		Bank Statement					
		on 1/14 / 2002					751 81

Establish a Wells Fargo IRA today. Call 1-800-BEST-IRA.



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DATE	CHECK NO. or CODE	TRANSACTIONS CONFIRMATION NUMBER	TAX DEDUCT CODES	AMOUNT	✓	DEPOSIT AMOUNT	BALANCE
7/7/01	3114	BNA					1072 30
7/11/01	3115	BNA		584 26	✓		488 04
7/11/01	3116	Patent Bank Verizon		14 84	✓		473 20
7/18/01	3117	<del>Bank of America</del> Fees		53 10	✓		420 10
		Bank of America		121 50	✓		298 60
		Bank of America		14 -			284 60
7/18/01	3118	Smith Care		70/1/01			147 09
		Belong to WPA					1708 60
7/18/01	3119	Went Group		1209 15	✓		646 54
7/18/01	3120	Verizon		131 76	✓		514 78
7/18/01	3121	ALR PRINCIPAL		119 87	✓		394 79
7/18/01		DEPOSIT		60 -	✓		334 79
				✓1500 -			1834 79
7/18/01	3122	Law Journal Press		82 80	✓		1751 99
		Rep Flight Ticket					

Use your computer to bank with Wells Fargo Online®.

DATE 012 CUST XXX TR TR

TRANSACTION CODES: ATM-ATM Transactions, EC-Express Card Purchase, BP-Bill Payment, D-Deposit.

DATE	CHECK NO. or CODE	TRANSACTIONS CONFIRMATION NUMBER	TAX DEDUCT CODES	AMOUNT	✓	DEPOSIT AMOUNT	BALANCE
10/18/01	3123	ACE Market		61 -	✓	<del>620</del>	1751 99
10/18/01	3124	Nov. Trimmer		9 11	✓		1611 49
	3125	CAMA		65 -	✓		1682 00
10/18/01	3126	<del>CAMA</del>		101 25	✓		1617 00
	3127	Verizon		60 10	✓		1515 75
		10/29/01 B/HWIK	B/HWIK				1454 85
							1455 12
10/31/01	3128	Time, Auto Plants		26 50	✓		1428 62
11/4/01	3129	Smart Car		1252 60	✓		176 02
11/7/01	3130	FARMES		19 99	✓		156 03
11/7/01		DEPOSIT					2156 03
	3131	BWA		<del>510 37</del>	✓	2000 -	<del>1645 64</del>
		<u>VOID</u>					
11/11/01	3132	Verizon		140 82	✓		2015 21
11/11/01	3133	<del>Verizon</del>		153 -	✓		1862 21
	3134	<del>Verizon</del>		54	✓		1808 21

Apply for a Wells Fargo Credit Card today. Call 1-800-TO-WELLS.

TRANSACTION CODES: ATM-ATM Transactions, EC-Express Card Purchase, BP-Bill Payment, D-Deposit.

DATE	CHECK NO. or CODE	TRANSACTIONS CONFIRMATION NUMBER	TAX DEDUCT CODES	AMOUNT	✓	DEPOSIT AMOUNT	BALANCE	
	3104	VENIZON		106 20	✓		314	50
							208	30
1/1/01		RR POST	OK 8/31/01	14	✓	1500 -	1708	30
1/3/01	3105	RENT		1243 94	✓		1694	30
							450	36
	3106	<del>CHURCH</del>		164 25	✓		286	11
	3107	ACE PAPER		60 -	✓		226	11
		For		14			212	11
		BANK BALANCE					212	25
8/24/01	3108	<del>CHURCH</del>		123 75	✓			
	3109							
	3110	Wm By BILL FOLD						
	3111							
9/4/01		DEPOSIT			✓	2152 05	2364	30
		9/4/01 DEPOSIT of		1708 60	✓	WOT THIS ALLOT		
9/4/01	3112	RENT		1232	✓		1132	30
	3113	Paid		60 -	✓		1072	30

Keep your valuables secure in a Wells Fargo Safe Deposit Box.

TRANSACTION CODES: ATM-ATM Transactions, EC-Express Card Purchase, BP-Bill Payment, D-Deposit.

DATE	CHECK NO. or CODE	TRANSACTIONS CONFIRMATION NUMBER	TAX DEDUCT CODES	AMOUNT	✓	DEPOSIT AMOUNT	BALANCE
5/14/01	3096	Vision		134 64	✓		1308 82
5/14/01	3097	Teleph Service					1174 18
6/1/01		advent		53 10	✓		1121 08
6/1/01	3098	DEPOSIT				1250 -	2371 08
		Smith Chan Kahr		1231 95	✓		1139 13
		June new		604 80	✓		535 33
	3099	Walt Group					
4/1/01	3100	ACB		60 -	✓		475 33
		BANK BALANCE					550 85
6/20/01		6/20/2001					
		DEPOSIT					
7/4/01	3101	Smith Chan				300 -	1850 85
7/5/01	3102	<del>Smith Chan</del>		1219 85	✓		631 00
7/1/01	3103	ACB		256 50	✓		374 50
		July		60 -	✓		314 50

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EX. 11

BANK Statement 1/22/02

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DATE	CHECK NO. or CODE	TRANSACTIONS CONFIRMATION NUMBER	TAX DEDUCT CODES	AMOUNT	✓	DEPOSIT AMOUNT	BALANCE
							751 91
	3143	VOID For		-14	✓	11	738 02
	3144	City of Tampa		161	✓		540 91
1/19/02	3145	Venue		80 90	✓		530 01
	3146	Cara Canilli		227 25	✓		
	3147	Cara Canilli		50	✓		238 87
	3148	WIPO PCT App Guide		131	✓		107 87
	3149	Cara		45	✓		62 87
1/22/02		DEPOSIT BANK			✓	850	912 87
	3150	POSTMASTER		102 20	✓		810 17
		P. D. STAMPS				544.44	
check	27 Feb	DEPOSIT				368 50	1179 17
BALANCE →		EX. B. WIL				STAMPMASTER	1165 17
	3151	MPCP VISA/Check		216	✓		949 17
	3152	VERIZON		60 90	✓		888 27
	3153	LOW MY BROWARD					

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EXHIBIT 11

EX. 12

Name of Company	Address	City	State	Zip	Sent Date	Sent Account #
AARP Bulletin	P.O. Box 199	Long Beach	CA	90801	1/31/2002	0382565495A 0
Abbott Langer & Associates, Inc.	548 First Street	Crest	IL	60417	1/31/2002	62827
ABP International, Inc.	317 Madison Ave., Ste. 1800	New York	NY	10017-5391	yes	1/31/2002
American Bar Association	750 N. Lake Shore Drive	Chicago	IL	60611	yes	35662750
American Conference Institute	41 West 25th Street	New York	NY	10010	yes	4/3/2002
American Express Small Busi	P.O. Box 30383	Salt Lake City	UT	84130-0383	yes	1/31/2002
American Geriatric/Protonic Technol	P.O. Box 3221	Lowell	MA	01853-9893	yes	1/31/2002
Applied Biosystems Abn. Literature Ser	650 Lincoln Center Drive	Porter City	CA	94404	yes	4/3/2002
Aspen Law & Business	1105 Avenue of the Americas	New York	NY	10036	yes	1/31/2002
Aspen Publishers, Inc.	P.O. Box 990	Frederick	MD	21705-0990	yes	1/31/2002
Bank of America Trust account						4/3/2002 called and changed by phone
Blumberg Excelsior	62 White St.	New York	NY	10013	yes	1/31/2002
BNM's PA, TM & CR Journal	1231 25th St.	NW Washington	DC	20037-1197	yes	1/31/2002
Business 2.0	1 California St.	San Francisco	CA	94111	yes	12/18/2001
California Bar Journal	180 Howard St.	San Francisco	CA	94105-1639	yes	1/31/2002
Center for Auto Safety	1825 Connecticut Ave.	Washington	DC	20005-5708	yes	1/31/2002
CLE International	1620 gaylord St.	Denver	CO	80206	yes	1/31/2002
Continuing Education of the Bar	300 Frank H. Ogawa Plaza Suite 410	Oakland	CA	94612	yes	1/31/2002
CRC Press	500 Hutton Street	Michigan City	IN	46360-3368	yes	1/31/2002
Dot Imaging and Printing	20685 S. Western # 116	Torrance	CA	90501	yes	1/31/2002
Editor Insurance Agency, Inc.	P.O. Box 5317	Woodland Hills	CA	91394	yes	1/31/2002
Electronic Products	P.O. Box 184	Pittsfield	MA	01203-9899	yes	4/3/2002
Enrica	P.O. Box 3402	Reading	MA	01867	yes	1/31/2002
Envera	P.O. Box 5471	Northbrook	IL	60065-5402	yes	1/31/2002
Forbes Subscriber Service	www.forbes.com/subscribe/atl@600772-1997	Han	IA	51593-0871	yes	1/31/2002
Gerber's Pharmacy Summit	www.law.gmu.edu or ip@igmu.edu	Car	VA	27511	yes	12/4/2002
Georgia Mason University (SOL)	9000 Regency Parkway, Suite 500	Salt Lake City	UT	84119	yes	1/31/2002
Global Knowledge	870 West 2800 South	Palatine	IL	60067	yes	1/31/2002
Intellect	375 W. Northwest Hwy	Han	IA	51593-0472	yes	4/3/2002
Intellectual Property Today	P.O. Box 3282	New York	NY	10010	yes	1/31/2002
Kiplinger's Personal Finance	345 Park Avenue South	New York	NY	10016	yes	1/31/2002
Law Journal Newsletters	105 Madison Avenue	Escondido	CA	92046-9050	yes	1/31/2002
Legal Affairs (Vale law school)	P.O. Box 469650	Indianapolis	IN	46206-6382	yes	1/31/2002
Library of Science	6650 E. 30th St. (P.O. Box 6382)	Los Angeles	CA	90012	yes	1/31/2002
Los Angeles Opera	135 North Grand Ave.	New York	NY	10018-0602	yes	1/31/2002
Marcel Dekker, Inc.	270 Madison Ave.	Arlington	VA	22202	yes	1/31/2002
Marlin E. Keller	2101 Crystal Plaza Arcade PMB 170	King of Prussia	PA	19408-0230	yes	1/31/2002
Mealy Publications & Conferences Group	P.O. Box 82090	Northbrook	IL	60065-5275	yes	1/31/2002
Modern Drug Discovery	P.O. Box 3275	Hennwood	CA	37024-5181	yes	1/31/2002
Nature Reviews Neuroscience	P.O. Box 5161	Hennwood Beach	CA	90254	yes	1/31/2002
Next Idea	1018 Aviation Blvd.	Boca Raton	FL	33431-0809	yes	1/31/2002
Office Max	P.O. Box 5009	Shaler Heights	OH	44122	yes	1/31/2002
Opera Pacific	3605 Varenville Center Rd.	Strata Ana	CA	92707	yes	1/31/2002
Patent & Trademark Office	800 West Warner Ave.	Washington	DC	20231	yes	1/31/2002
PC Magazine	Director of U.S. PTO Box OED	Boulder	CO	80323-1524	yes	1/31/2002
Popular Science	P.O. Box 60001	Tampa	FL	33680-0001	yes	1/31/2002
Practicing Law Institute	810 7th Avenue	New York	NY	10018	yes	1/31/2002
Qiagen, Inc.	28159 Avenue Stantford	Valencia	CA	91395-1106	yes	1/31/2002
Riviera Euro-Comfort Footwear	255 Avenida Del Norte	Randolph Beach	CA	90277	yes	1/31/2002
Salomon Smith Barney	388 Greenwich St.	New York	NY	10013-2386	yes	1/31/2002
Savoy Palace, Inc.	8174 South Holly #404	Centennial	CO	80122-4004	yes	1/31/2002
Technical Advisory Service for Attorney	1166 DeKalb Pike	Blue Bell	PA	19422-1653	yes	1/24/2002
Technology Review	www.technologyreview.com/customer/addresschange	Thousand Oaks	CA	91320-1200	yes	1/31/2002
Testequity Inc.	2450 T. University Circle	North Hollywood	CA	91615-5637	yes	1/31/2002
The Scientist	P.O. Box 15397	Bethesda	MD	20814	yes	1/31/2002
The World Future Society	7810 Woodmont Ave. #450	North Quincy	MA	02171-3145	yes	1/31/2002
Thomson & Thomson	500 Victory Road	Dallas	TX	75252	yes	1/31/2002
Timeslips	17850 Preston Road Suite 800	Los Alamitos	CA	90720-2816	yes	4/3/2002
Transamerica Insurance and Invest grou	Russell O. Rutino 4281 Karella Ave. Suite 105	Berkley	CA	94720	yes	4/3/2002
UC Berkeley Extension Services	Dept. B 1895 University Ave.	San Francisco	CA	94103-1741	yes	1/31/2002
Wells Fargo	888 Market Street	Rechester	NY	14610	yes	12/14/2001
Wiley/Jessy-Bass	P.O. Box 10308	Boone	Iowa	50037-4501	yes	1/31/2002
William McLaughlin Associates	P.O. Box 37706	Schunburg	IL	60173-4887	yes	1/31/2002
Wired	1400 American Lane	Eagan	MN	55123-1386	yes	1/31/2002
Zurich Direct	6100 Opelman Drive	Atlanta	GA	60646-5109	yes	1/31/2002
West Group	P.O. Box 105108	Chicago	IL	60646-5095	yes	1/31/2002
BlawWorl	4025 West Peterson Ave.	Eau Claire	WI	54702	yes	1/31/2002
CCH Incorporated	P.O. Box 3087	New York	NY	10016-5991	yes	1/31/2002
National Business Institute						PC61603
American Institute of Chemical Engineer	Three Park Avenue					UU SIC: 811103
						EBC11

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EX 12



EX. 13

LA 251  
View of the Manhattan Beach Pier

Receipt is hereby acknowledged  
for Request for status on  
patent app. serial # 09/301,868  
Applicant Mark Beckman  
for : Snack package adapter

Mailed 5/4/2004



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EXHIBIT 13

EX. 14

# PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To: JOHN E. HALAMKA  
21515 HAWTHORNE BLVD.,  
SUITE 590  
TORRANCE CA 90503

## PCT

### NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL SEARCH REPORT OR THE DECLARATION

(PCT Rule 44.1)

Applicant's or agent's file reference PAI.640.PCT	Date of Mailing (day/month/year)
International application No. PCT/US00/11269	International filing date (day/month/year) 27 APRIL 2000
Applicant BECKMAN, MARK JAMES	

1. ☒ The applicant is hereby notified that the international search report has been established and is transmitted herewith.  
 Filing of amendments and statement under Article 19:  
 The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):  
 When? The time limit for filing such amendments is normally 2 months from the date of transmittal of the international search report; however, for more details, see the notes on the accompanying sheet.  
 Where? Directly to the International Bureau of WIPO  
 34, chemin des Colombettes  
 1211 Geneva 20, Switzerland  
 Facsimile No.: (41-22) 740.14.35  
 For more detailed instructions, see the notes on the accompanying sheet.
2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect is transmitted herewith.
3. ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:
 

☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.  
☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.
4. Further action(s): The applicant is reminded of the following:  
 Shortly after 18 months from the priority date, the international application will be published by the International Bureau.  
 If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in rules 90 bis 1 and 90 bis 3, respectively, before the completion of the technical preparations for international publication.  
 Within 19 months from the priority date, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later).  
 Within 20 months from the priority date, the applicant must perform the prescribed acts for entry into the national phase before all designated Offices which have not been elected in the demand or in a later election within 19 months from the priority date or could not be elected because they are not bound by Chapter II.

Name and mailing address of the ISA/US Commissioner of Patents and Trademarks Box PCT Washington, D.C. 20231 Facsimile No. (703) 305-3230	Authorized officer MAI HAO Telephone No. (703) 308-0661
---	---

EXHIBIT 14

## PCT

## INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference PA1.640.PCT	FOR FURTHER ACTION see Notification of Transmittal of International Search Report (Form PCT/ISA/220) as well as, where applicable, item 5 below.	
International application No. PCT/US00/11269	International filing date (day/month/year) 27 APRIL 2000	(Earliest) Priority Date (day/month/year) 29 APRIL 1999
Applicant BECKMAN, MARK JAMES		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 3 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

## 1. Basis of the report

a. With regard to the language, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ the international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international search was carried out on the basis of the sequence listing:

☐ contained in the international application in written form.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority in written form.

☐ furnished subsequently to this Authority in computer readable form.

☐ the statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

☐ the statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

2. ☐ Certain claims were found unsearchable (See Box I).

3. ☐ Unity of invention is lacking (See Box II).

4. With regard to the title.

☒ the text is approved as submitted by the applicant.

☐ the text has been established by this Authority to read as follows:

5. With regard to the abstract.

☐ the text is approved as submitted by the applicant.

☒ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box III. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. The figure of the drawings to be published with the abstract is Figure No. 2

☐ as suggested by the applicant.

☒ because the applicant failed to suggest a figure.

☐ because this figure better characterizes the invention.

☐ None of the figures.

## Box III TEXT OF THE ABSTRACT (Continuation of item 5 of the first sheet)

The technical features mentioned in the abstract do not include a reference sign between parentheses (PCT Rule 8.1(d)).

## NEW ABSTRACT

A combination drink bottle(10), snack package(20) and envelope(30) provides a cylindrical bottle wall(12) joined axially with a diminished diameter bottle neck(14), which terminates at a removable bottle cap(16). The sealed snack package(20) contains a snack food(22) adapted for being wrapped around for over the bottle neck(14) for intimate abutment therewith. The envelope has a cylindrical envelope wall terminating with an aperture at one end thereof, the aperture adapted for accepting the bottle neck(14) and for positionning an inner surface of the envelope wall intimately against the bottle wall(12) for securement therewith, the envelope further enabled for pressing the snack package against the bottle neck(14), the envelope wall extending diametrically from the bottle wall no more than by the thickness of the envelop wall.

**A. CLASSIFICATION OF SUBJECT MATTER**

IPC(7) :A21D 10/02; A45C 11/20; B65D 25/00, 85/00, 90/00, 8/00

US CL :426/ 120, 115, 122; 206/ 541, 545, 548, 217; 220/ 739, 903

According to International Patent Classification (IPC) or to both national classification and IPC

**B. FIELDS SEARCHED**

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 426/ 120, 115, 122; 206/ 541, 545, 548, 217; 220/ 739, 903

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)

**C. DOCUMENTS CONSIDERED TO BE RELEVANT**

Category*	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
Y	US 5,318,787 A (BRAUNER et al) 07 June 1994, figs. 1-4, col. 6, lines 6+.	1-17
Y	US 5,674,546 A (BARNES et al) 07 October 1997, col. 6, lines 40, fig. 3.	3-4, 7-8, 11-12
Y	US 5,950,913 A (REA et al) 14 September 1999, col. 3, lines 4+.	5, 9, 13
Y	US 4,170,316 A (LABARBERA) 09 October 1979, figs. 2-3d, col. 1, line 45	2, 16



Further documents are listed in the continuation of Box C.



See patent family annex.

* Special categories of cited documents:	*T* later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
*A* document defining the general state of the art which is not considered to be of particular relevance	*X* document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
*E* earlier document published on or after the international filing date	*Y* document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art
*L* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)	*G* document member of the same patent family
*O* document referring to an oral disclosure, use, exhibition or other means	
*P* document published prior to the international filing date but later than the priority date claimed	

Date of the actual completion of the international search

10 JULY 2000

Date of mailing of the international search report

31 JUL 2000

Name and mailing address of the ISA/US  
Commissioner of Patents and Trademarks  
Box PCT  
Washington, D.C. 20231

Facsimile No. (703) 305-3230

Authorized officer

MAI HAO

Telephone No. (703) 308-0661

EX. 15



Receipt is hereby acknowledged for a RESPONSE TO WRITTEN  
OPINION dated April 2, 2001, 6 pages of substituted  
specification and claim, and 1 page substituted drawing.

*Certificate of Express Mail*  
Mailed 4 June 2001  
Express mail EK333440215US  
PCT/US00/11269  
Mark James Beckman

JC17 Rec'd PCT/PTO 04 JUN 2001

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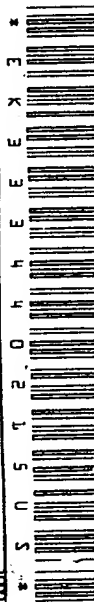


EXHIBIT 15

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

In re Patent Application of PCT Operations-IAPD Team 2

MARK JAMES BECKMAN

Int'l App. # PCT/US00/11269

Filed: 27 April, 2000

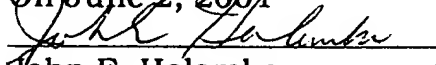
PRIORITY DATE: 29 April, 1999  
For: SNACK PACKAGE ADAPTED  
FOR A BOTTLE

Examiner: Mr. Hao Mai

I hereby certify that this  
correspondence is being deposited  
with the United  
States Postal Service as express mail  
in an envelope

ADDRESSED TO:  
Ass't Commissioner for Patents  
Box PCT  
Washington, D.C. 20231

On June 2, 2001

  
John E. Halamka

Dated: June 2, 2001  
Torrance, California

RESPONSE

Assistant Commissioner for Patents  
Box PCT  
Washington, D.C. 20231  
Attn: Mr. Hao Mai

Dear Mr. Mai:

Responsive to the Written Opinion dated April 2, 2001, please  
accept this response containing the following items:

This written discussion of possible inconsistencies in the  
application specification and claims with suggested changes which are  
all incorporated into substitute pages. Kindly substitute the pages for  
the original pages submitted.

This written discussion respectfully traversing the examiner's  
opinion of applicability of the cited prior art to reject each of applicant's  
claims.

Applicant notes that the use of the terms "adapted" and "enable" do not positively recite the claimed invention and Applicant's attorney has reviewed the specification and claims and has clarified the use of the terms "adapted" and "enable" with the changes to the specification and claims to follow. Applicant's attorney respectfully believes that he has not added any new matter to the application by these changes and that such changes place the claims as supported by the specification in a state to be examined.

IN THE SPECIFICATION:

Page 6, line 30, delete "adapted by its" and in its place insert --preselected to be of a size and--.

Page 6, line 33, after "therewith", insert --so as to not extend beyond the diametrical size of the bottle wall 12 thereby allowing the combination of bottle 10 and snack package 20 to be placed in substantially the same space occupied by just the bottle 10--.

Page 7, line 1, after "sheet" insert --of a preselected thickness--.

Page 7, line 3, delete "adapted by its" and in its place insert --of a--.

Page 7, line 3, after "neck 14" insert, --in contact with snack package 20--.

Page 7, line 9, after "snack" insert --package 20, drink bottle 10 and--.

Page 7, line 10, after "bottle" insert --10--.

Page 7, line 15-16, delete "being adapted by its" and insert --having an--.

Page 7, line 16, delete "by its" and insert --a selected--.

Page 7, line 24, after "bottle wall" insert --12--.

Page 8, line 4, delete "In" and insert --Now referring to Figures 7 and 8, there is depicted--.

Page 8, line 6, after "which envelope" insert --50--.

Page 8, line 6, after "snack package" insert --20--.

Page 8, line 6, after "envelope" insert --30--.

Page 8, line 10, delete "adapted by" and insert --fabricated in a preselected shape thereby--.

Page 8, line 12, after "32" insert --of a preselected size so as to not extend beyond the diametrical size of the bottle wall 12 more than the thickness of wall 32 of the envelope 50--.

Page 8, line 13, after "aperture" insert --34--.

Page 8, line 16 contains element "surface 54" which is not evident in the drawing, insert --54-- into Figure 7 and add --10--to Figure 7 to increase consistency, a marked up Figure 7 is attached.

Page 8, line 16, delete "envelope 32" and insert --sealed snack envelope 50--.

Page 8, line 17, delete "with" and insert --over--.

Page 8, line 20, delete "enablement of the".

Page 8, line 20, after "wall 56" insert --is fabricated--.

Page 8, lines, 21 and 9, delete "is inventively" and insert --by having--.

Page 8, line 21, delete "protuberence" and insert --protuberance--.

Page 8, line 21, after "snap" insert --removably/--.

Page 8, line 24, delete "protuberence" and insert --protuberance--.

Page 8, line 28, delete "the envelope" and insert---and 8, the snack envelope 50--.

Page 8, line 31, after "50" insert --before or after the snack envelope 50 is removed from snap engagement with the bottle 10--.

As required applicant's attorney has provided substitute pages 6, 7, 8, and 9 of the specification and Fig 7 incorporating the above changes and requests they be entered into the file.

#### IN THE CLAIMS:

Delete claim 10 and insert in place thereof:

10. (First Amended) A combination drink bottle and snack package (envelope), the combination comprising:

a drink bottle providing a cylindrical bottle wall joined axially with a diminished diameter bottle neck, the bottle neck terminating at a removal bottle cap; and,

a (sealed) snack package fabricated as an envelope (adapted for) having an inner wall and an outer wall having a sealable opening mounted on said outer wall for removably receiving a snack food, the snack package envelope having a cylindrical envelope outer wall joined to said inner wall, terminating with an aperture at one end thereof, the aperture (adapted) having a size and shape for accepting the bottle neck and removable cap and located so that under the condition of said aperture engaged with said bottle neck and cap, there is a (for) positioning of the (an) inner surface of the snack envelope inner (outer) wall intimately against the bottle wall for securement therewith, the aperture (envelope) further providing a concentrically oriented cylindrical inner wall (enabled) for engagement with the bottle (neck) cap, the snack envelope extending diametrically from the bottle wall no more than by the thickness of the outer envelope wall thereby allowing said combination to occupy substantially the same space as a drink bottle alone.

In Claim 11 line 2, after "positioned for" insert --removable--.

In Claim 11 line 2, after "surface of the" insert --snack--.

In Claim 11 line 3, delete "for sealing the envelope".

In Claim 12 line 2, before "envelope" insert --snack--.

In Claim 12 line 3, delete "envelope" and insert --opening of said aperture--.

Delete claim 13 and insert the following in place thereof:

13. (First Amended) The combination of claim 10 wherein the outer snack envelope wall is spirally scored so as to enable peeling the envelope without releasing said snack food from said envelope, thereby allowing a user to remove said snack envelope away from the drink bottle.

Delete claim 14 and insert the following in place thereof:

14. (First Amended) The combination of claim 10 (wherein the enablement) further comprising a catch mounted on (of) the inner wall for engagement with the bottle neck, said catch fabricated in the form of (is) an inwardly radially directed (protruberence) protuberance.

As required applicant's attorney has provided substitute page 12 and 13 of the claims incorporating the above changes and requests they be entered into the file.

Applicant's has eliminated the terms "adapted" and "enable" in the claims and specification so as to better define the claims and positively recite the claimed invention.

The claims are in a form to be examined and timely allowance is respectfully requested.

The examiner has rejected claims 10, 14-15, 17 as being unpatentable over Brauner and states that the cylindrical bottle and cylindrical envelope are simply a design choice and therefore not inventive.

Applicant's attorney respectfully traverses the examiner's conclusion because applicant's inventive step is at least combining two vending spaces (one for a drink and a second for a snack) into a single unit that can occupy and be vended from a single space without any modifications required to the vending machines. All of the prior art teaches using the entire vending space for either a bottle or snack.


The examiner has rejected Claims 11-12 as being unpatentable over Brauner in view of Barnes. On reading Barnes, applicant's attorney only finds "A simple adhesive tape can be employed" Page 6, line 44, which may be viewed as prior art by the examiner. However, using tape to hold things in place is well established in the art and is not considered an inventive step by applicant by itself in the claims. The claims are dependent in nature and contain all of the limitations of the claims upon which they depend. Hence, these claims should be allowable.

The examiner has rejected Claim 13 as being unpatentable over Brauner in view of Rea. Packaging multiple items within a single package and making that outside package easy to open is not the claimed inventive step by applicant as Claim 13 contains all of the limitations of the claims upon which it is dependent and should be allowed.

The examiner has rejected Claim 16 as being unpatentable over Brauner in view of LaBarbera. Attachment of an overcover is well known in the art and not claimed as an inventive step by applicant in this dependent claim. Because the claim contains all of the limitations of the claims upon which it is dependent it should be allowed.

Applicant's attorney believes the submission is now in proper form to be fully examined and notice of allowance is anticipated.

Respectfully submitted,

  
John E. Halamka

Ex. 16



~~OT07 Rec'd PCT/PTO~~ ~~11 MAY 2004~~

PCT/US00/11269.11052004

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

In re Patent Application of  
BECKMAN, MARK J.

GROUP NUMBER 1761

I hereby certify that this correspondence  
is being deposited with the United

International application  
Number PCT/US00/11269  
Filed: 04/27/2000

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class mail in an envelope  
ADDRESSED TO:

For: SNACK PACKAGE  
ADAPTER FOR A  
BOTTLE  
Group: 1761

Commissioner of Patents  
and Trademarks, Box 1450,  
Alexandria, VA, 20231

On 4 MAY 2004

  
John E. Halamka

Authorized Officer R. Forax

Dated: 04 MAY 2004

Palos Verdes Estates, California

REQUEST FOR STATUS

Mail Sop PCT  
Honorable Commissioner of Patents and Trademarks  
Alexandria, Virginia 22313-1450  
Attn: Examiner R. Forax

Dear Assistant Commissioner:

This office is attorney of record for the applicant. As we have not  
had any correspondence after filing the response to Paper 5, we  
respectfully request notification of the status of the examination of the  
application.

Kindly note that I have filed a change of address and please send  
response to P.O. Box 207, Palos Verdes Estates, CA 90274.

Respectfully submitted,


  
John E. Halamka  
Palos Verdes Estates, CA

EXHIBIT 16

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

IN RE Patent Application of  
BECKMAN, MARK J.

GROUP NUMBER 1761

I hereby certify that this correspondence  
is being deposited with the United

International application  
Number PCT/US00/11269  
Filed: 04/27/2000

States Postal Service as first  
class mail in an envelope  
ADDRESSED TO:

For: SNACK PACKAGE  
ADAPTER FOR A  
BOTTLE  
Group: 1761

Commissioner of Patents  
and Trademarks, Box 1450,  
Alexandria, VA, 20231  
On 4 MAY 2004

Authorized Officer R. Forax

John E. Halamka  
Dated: 04 MAY 2004  
Palos Verdes Estates, California

REQUEST FOR STATUS

Mail Sop PCT  
Honorable Commissioner of Patents and Trademarks  
Alexandria , Virginia 22313-1450  
Attn: Examiner R. Forax

Dear Assistant Commissioner:

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had any correspondence after filing the response to Paper 5, we  
respectfully request notification of the status of the examination of the  
application.

Kindly note that I have filed a change of address and please send  
response to P.O. Box 207, Palos Verdes Estates, CA 90274.

Respectfully submitted,

John E. Halamka  
Palos Verdes Estates, CA

13 p c t  
MAY 2002  
no change of address  
E-arr  
409



Acknowledgement of receipt  
of request for status.

Mailed 4 May 2004

Applicant: Mark Beckman

Serial #PCT/US00/112 69

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California Scene®  
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Law Office of  
John E. Halamka  
P.O. Box 207  
Palos Verdes Estates  
CA 90274

EX. 17

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Page 1 of 1



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EXHIBIT 17

EX. 18



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE CHIEF INFORMATION OFFICER

Date: 7/16/04

Dear: Ms Holamka

This is in response to your correspondence dated 7/13/04

Your order for printed copies of the following U. S. Patent (s), Design Patent(s) Plant(s) Trademark(s) and/or a Patent Application(s) cannot be filled for the following reason(s).

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Reference# 09/301,868

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☐ This office cannot identify the copy you requested. The information/number given is either incomplete or does not correspond with existing PTO records:

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ART CHIEF

EX. 19



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**JOHN E. HALAMKA**

POST OFFICE BOX 207  
PALOS VERDES ESTATES, CA 90274

(310) 316-6100

FACSIMILE: (310) 541-8290

EMAIL: [halamka@usc.edu](mailto:halamka@usc.edu)

U.S. Department of Commerce  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Attn: File Management

26 July 2004

By Fax to 703-308-7948

**REQUEST FOR STATUS OF  
COPIES FAXED 9/9/04**

*2 PAGES*

→ **08/03/04**  
**DEPOSIT ACCOUNT BILLED**  
**NOT RECEIVED AS OF 9/9/04** →

RE: 1) U.S. Patent Application  
Serial No. 09/301,868  
Applicant: Mark James Beckman  
Docket PA 1640  
2) U.S. PCT Filing  
Serial No. PCT/US00/11269  
Applicant: Mark James Beckman  
Docket PA 1640.PCT

Dear Sirs:

*Received*  
*See attached Account*

I am the attorney of record for the above referenced Patent Applications.

Problems have arisen in the prosecution of each application that I do not seem to be able to solve without obtaining a copy of the complete file as it stands in the Patent Office. I do not require a certified copy.

Kindly provide a copy of both files at your earliest convenience.

THIS IS THE SECOND REQUEST for the file for 09/301,868. The first request, dated 12 July 2004 was denied as the reviewing person could not determine that I was the attorney of record. I responded to the First Office Action on this application with a request to change the attorney of record information to my office. I included a Declaration and Power of Attorney signed by the Applicant, Mark James Beckman. A copy of the first page of the Office Action and the Power of Attorney appointing this office as Attorney of Record is attached hereto.

I understand that the cost of obtaining a copy of each file could be \$200.00 or more. You are hereby authorized to charge my Deposit Account for the cost of this process and preparing the copies or CD ROM for mailing to the above address. My Deposit Account Number is 080207.

Attachments: Page 1, Office Action  
POW

Sincerely,  
*John E. Halamka*  
John E. Halamka

EX-119



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE CHIEF INFORMATION OFFICER

September 09, 2004

JOHN E. HALAMKA  
P.O. BOX 207  
PALOS VERDES ESTATES, CA 90274

Cont #  
1205737

This is to inform you that fulfillment of your request for the following document(s) in your order dated 07-30-2004 will be delayed:

09301868 PATENT FILE WRAPPER ALL PAPERS-MAIL 1

The source media for the copies you requested cannot be located. We will be able to continue processing your order when the action indicated below is completed. At this time we cannot estimate the duration of the delay in fulfilling your order.

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- ☐ The file wrapper required to fill your order has been placed on Official Search.
- ☐ The file wrapper required to fill your order is currently being reconstructed.
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9/23/04  
~~10/1/04~~  
T/C

Status?

LAW OFFICES

JOHN E. HALAMKA

POST OFFICE BOX 207

PALOS VERDES ESTATES, CA 90274

(310) 316-6100

FACSIMILE: (310) 541-8290

EMAIL: [halamka@usc.edu](mailto:halamka@usc.edu)

26 July 2004

By Fax to 703-308-7948

U.S. Department of Commerce  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Attn: File Management

RE: 1) U.S. Patent Application  
Serial No. 09/301,868  
Applicant: Mark James Beckman  
Docket PA 1640  
2) U.S. PCT Filing  
Serial No. PCT/US00/11269  
Applicant: Mark James Beckman  
Docket PA 1640.PCT

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I understand that the cost of obtaining a copy of each file could be \$200.00 or more. You are hereby authorized to charge my Deposit Account for the cost of this process and preparing the copies or CD ROM for mailing to the above address. My Deposit Account Number is 080207.

Sincerely,

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POW

John E. Halamka

EXHIBIT

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JOHN E. HALAMKA

POST OFFICE BOX 207

PALOS VERDES ESTATES, CA 90274

(310) 316-6100

FACSIMILE: (310) 541-8290

EMAIL: [halamka@usc.edu](mailto:halamka@usc.edu)

U.S. Department of Commerce  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Attn: File Management

26 July 2004

By Fax to 703-308-7948

**REQUEST FOR STATUS OF  
COPIES FAXED 9/9/04**

*2 PAGES*

**08/03/04**

**DEPOSIT ACCOUNT BILLED  
NOT RECEIVED AS OF 9/9/04**

RE: 1) U.S. Patent Application

Serial No. 09/301,868

Applicant: Mark James Beckman

Docket PA 1640

2) U.S. PCT Filing

Serial No. PCT/US00/11269

Applicant: Mark James Beckman

Docket PA 1640.PCT

Dear Sirs:

*Received*

*See attached Account*

I am the attorney of record for the above referenced Patent Applications.

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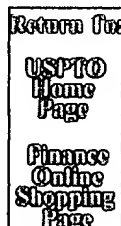
Attachments: Page 1, Office Action  
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Sincerely,

*John E. Halamka*  
John E. Halamka



United States  
Patent and  
Trademark Office



**Deposit Account Statement**

**Requested Statement Month:** August 2004  
**Deposit Account Number:** 080207  
**Name:** JOHN E HALAMKA  
**Attention:**  
**Address:** P.O. BOX 207  
**City:** PALOS VERDES ESTATES  
**State:** CA  
**Zip:** 90274

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
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08/03	359	PCT/US00/11269	PA1640,1640.PCT	8008	\$200.00	\$605.00
08/11	658	78465312	TM1688	7001	\$335.00	\$270.00
08/13	1	E-REPLENISHMENT		9203	-\$1,500.00	\$1,770.00
		START BALANCE	SUM OF CHARGES	SUM OF REPLENISH	END BALANCE	
		\$1,005.00	\$735.00	\$1,500.00	\$1,770.00	

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EX. 20

# Bimonthly Time Sheet 4:30pm

Date	Work Performed	IN	OUT	IN	OUT	TOTAL
1/4/2002	Moved desk and credenza	2:30pm		5:00pm		2.5
1/7/2002	Moved lateral files upstairs	2:00pm		5:15pm		3.25
1/14/2002	Loading documents into computer KHS- recordation of powertool assignment to PTO Downloaded TM recordation off website. PA form able to edit, TM unable to edit. Flow chart for access database	1:30pm	4:30pm	9:30pm		6
1/15/2002	KHS- recordation of powertool assignment to PTO Tenant Letter re: termination of monthly tenancy Postal run	1:00 PM		5:00 PM		4
1/16/2002	Lateral file upstairs, try to detect modem Detect modem download driver connect to net Create file for Blee, postal run for address correction	1:00 PM		5:00 PM		4
1/17/2002	Off					0
1/18/2002	Locating box #'s for files Change of address Yates- Cert of Reg (need to copy original b4 mailing) Shizuya- ltr to confirm abandon patent	12:00 PM		5:30 PM		5.5
	Total Hrs					25.25
	Wage Rate					\$9.00
	Payable					\$227.25
	Paid					
	Balance					\$227.25

EXHIBIT 20

EX. 21



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FOR

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Please use this form to update your correspondence/business and home addresses. The correspondence/business address provided will be the only address posted in the Roster of Agents and Attorneys, unless you indicate otherwise. This address update form must be signed by the attorney or agent and include the registration number.

NAME (last, first, middle name or initial)		REGISTRATION NUMBER (Required)	
Halamka, John E.		30,177	
CORRESPONDENCE / BUSINESS NAME (employer, corporation, law firm, or U.S. Government agency, etc.)			
Law Offices of John E. Halamka			
CORRESPONDENCE / BUSINESS ADDRESS (street, building, suite, etc.)			
3005 Via Borica			
CITY	STATE	ZIP CODE	CORRESPONDENCE / BUSINESS TELEPHONE
Palos Verdes Estates	CA	90274	(310) 316-6100
HOME ADDRESS			
3005 Via Borica			
CITY	STATE	ZIP CODE	HOME TELEPHONE
Palos Verdes Estates	CA	90274	(310) 541-8290

This address change is only for the roster of Attorneys and Agents and will not change the address of any applications in the patent process.

Note: US Government employees must list their agency address as their correspondence/business address.

If you have any questions regarding your address of record in the Office of Enrollment and Discipline, please call (703) 306-4097

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*John E. Halamka*

Signature of Registered Attorney or Agent (Required)

24 January 2002  
Date

EXHIBIT 21

1

ORIGINAL

PTO/SB/123 (04-05)

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Alexandria, VA 22313-1450

Patent Number

Issue Date

Application Number

09/301,868

Filing Date

29 April 1999

First Named Inventor

Mark J. Beckman

Attorney Docket  
Number

PA1.640

Please change the Correspondence Address for the above-identified patent to:

☐ The address associated with Customer Number:

000041953

*and/or*

☐ Firm or  
Individual Name LAW OFFICE OF JOHN E. HALAMKA

Address P.O. BOX 207

City PALOS VERDES ESTATES

State CA

ZIP 90274

Country USA

Telephone 316-6100

Email halamka@usc.edu

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I am the:

☐ Patentee.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ Attorney or agent of record. Registration Number 30177

Signature

Typed or

Printed Name

JOHN E. HALAMKA

Date 20 June 2005

Telephone 310-316-6100

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Post Issue, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

2

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICEIn re Patent Application of  
MARK JAMES BECKMAN

Serial No.: 09/301,868

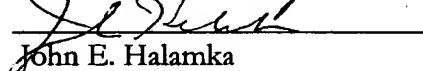
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FOR A BOTTLEI hereby certify that this correspondence  
is being deposited with the United  
States Postal Service as EXPRESS MAIL in  
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ADDRESSED TO:

Mail Stop Petitions

Commissioner of Patents

and Trademarks, Washington,

D.C. 20231 on 28 June 2005  
John E. HalamkaDated: 28 June 2005

Palos Verdes Estates, California

Examiner: John J. Gillen, Jr. Senior Attorney, Office of Petitions

AMENDEDResponse filed with supplemental petition to revive unavoidably abandoned  
application

RESPONSE TO OFFICE ACTION DATED 03/30/01

RECEIVED 10/10/04Honorable Commissioner of Patents and Trademarks  
Washington, D. C. 20231

Responsive to the Office action dated 03/03/01, it is requested that the attached Continuation in Part be filed in place of the pending application 09/301,868 and that the original application be abandoned in place of the Continuation in Part.

The original application was marked abandoned for failure to respond to this office action. Such failure was unavoidable as the action was not mailed to myself, the new attorney of record, nor to the prior attorney of record.

An original petition to revive was filed and denied therefore this supplemental  
petition to revive the original patent is also enclosed.

The examiner has found that the respond to Paper 5, filed by John E. Halamka, adds new matter to the patent application. Applicant's attorney respectfully disagrees but knows that a better response is to fine the application again with the "new matter" as a continuation in part. This is the course of action taken along with the petition to revive.

Applicant's attorney respectfully requests the filing of the Continuation in Part with the priority of the original patent application pending its successful revival.

Upon consideration of the above remarks, the applicant respectfully believes that the application will be found in condition for review and such review is respectfully solicited.

As this response is mailed within 2 months of actual receipt of the office action Applicant's Attorney does not believe any fees for late filing are due. However, if any are due, Applicant's Attorney hereby authorizes a charge to his deposit account 080207. The denial of the first petition has brought to my attention that a REQUEST FOR CONTINUED EXAMINATION DOES require a fee of \$395.00 and applicant's attorney hereby authorizes the payment of this fee by means of his deposit account.

Respectfully submitted,



John E. Halamka

3



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
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JGJR.: 03-05

Paper No: 11

JOHN E. HALAMKA, ESQ  
SUITE 590  
21515 HAWTHORNE BLVD.  
TORRANCE CA 90503

**COPY MAILED**

APR 29 2005

**OFFICE OF PETITIONS**

In re Application of  
Beckman  
Application No. 09/301,868  
Filing Date: 29 April, 1999  
Attorney Docket No. PA1.668FULL/640.CIP

DECISION

This is a decision on the petition filed on 21 December, 2004, alleging, *inter alia*, unavoidable delay under 37 C.F.R. §1.137(a).

For the reasons set forth below, the petition as considered under 37 C.F.R. §1.137(a) is  
**DISMISSED.**

The Revocation/Power of Attorney submitted on 10 December, 2004, hereby is acknowledged and accepted. However, the address of record is that set forth above, and, while Petitioner has suggested within his papers an indication that his current correspondence (mailing) address is something other than that listed in the Revocation/Power of Attorney, Petitioner has, as of this writing, failed to Notice the Office as to any such change. Therefore, Petitioner hereby is placed on notice that while a courtesy copy of this decision is being directed to the post office box address listed at the end of this decision, the address of record will remain that as listed above until such time as Petitioner properly Notices the Office of any change in that regard.



NOTES:

- (1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(a) (as to unavoidable delay) or an alternative request for relief under 37 C.F.R. §1.137(b)<sup>1</sup> (as to unintentional delay) must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)"; and/or "Petition under 37 C.F.R. §1.137(b)";
- (2) Thereafter, there will be no further reconsideration of this matter.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 30 March, 2001, with reply due absent extension of time on or before Monday, 2 July, 2001;
- the instant application went abandoned after midnight 30 June, 2001;
- the Office mailed a Notice of Abandonment on 6 November, 2001;
- although Petitioner discusses activities alleged to have occurred dating back to January 2001 through the filing of the instant petition on 10 December, 2004, there is no evidence of record that indicates Petitioner Noticed the Office with a Revocation/Power of Attorney prior to 10 December, 2004—contemporaneously with the filing of the instant petition;
- in fact, the instant petition recites: "I suspect that because I was not Attorney of record for 09/301,868, my request to change [the address of record in the application] was not honored";

---

<sup>1</sup> Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

- Petitioner provides no documentary evidence, such as date-stamped receipt cards (see: MPEP §503<sup>2</sup>) to support allegations as to any filings—including Requests for Status;
- moreover, as of this writing Petitioner provides no sufficient basis for waiting almost 43 months to act to revive the instant application; and
- while Petitioner suggests at one point in the petition and the Power of Attorney submitted directs that his office address is as listed at the top of this decision, he indicates at another that his address P.O. Box 207, Palos Verdes Estates, CA 90274—however, there is no indication that a formal Notice of Change of Address has been filed of record herein, and Petitioner must cure that deficiency;
- Petitioner acknowledges that his response is to a final Office action, however, his reply is

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<sup>2</sup> MPEP §503 provides in pertinent part:  
**§503 Application Number and Filing Receipt**

\* \* \*

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

\* \* \*

#### RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

not a proper reply as submitted with the instant petition to a final Office action,<sup>3</sup> and Petitioner is directed to the regulations at 37 C.F.R. §1.114;

- Petitioner styles his petition as one alleging “unavoidable delay” to be considered under 37 C.F.R. §1.137(a), and buries within the paper what appears to be an alternative plea for relief under the provisions of 37 C.F.R. §1.137(b)—*i.e.*, alleging unintentional delay—and Petitioner is directed to the regulations at 37 C.F.R. §1.4(d);
- Petitioner suggests but does not support allegations to be considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.

### STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to “revive an application if the delay is shown to the satisfaction of the Commissioner to have been “unavoidable.” 35 U.S.C. §133 (1994).<sup>4</sup>

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.<sup>5</sup>

Delays in responding properly raise the question whether delays are unavoidable.<sup>6</sup> Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).<sup>7</sup>

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<sup>3</sup> A proper reply is a an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or a CPA or RCE (with fee and submission). (See: MPEP §711.03(c).)

<sup>4</sup> 35 U.S.C. §133 provides:  
**35 U.S.C. §133 Time for prosecuting application.**  
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

<sup>5</sup> Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

<sup>6</sup> See: *Changes to Patent Practice and Procedure; Final Rule Notice*, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

<sup>7</sup> See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

And the Petitioner must be diligent in attending to the matter.<sup>8</sup> Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.<sup>9</sup>))

As to Allegations to Seek

Withdrawal of the holding of abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.<sup>10</sup>

Petitioner has made no documented showing in support of such allegations.

Accordingly, the petition to withdraw the holding of abandonment as considered under 37 C.F.R. §1.181 must be and hereby is **dismissed**.

As to the Allegations

of Unavoidable Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a showing of unavoidable delay, a proper reply, and—where appropriate—a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Petitioner has failed to satisfy the “showing” and the “reply” requirements under the regulation.

As to the Allegations

of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement of unintentional delay (however, there may be a greater requirement if, as here, the

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<sup>8</sup> See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office *supra*.

<sup>9</sup> Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

<sup>10</sup> See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

delay is of such an extended period), a proper reply, and--where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Petitioner has failed to satisfy the "showing" and the "reply" requirements under the regulation.

### CONCLUSION

The petition as considered under 37 C.F.R. §1.181 as a request to withdraw the holding of abandonment is **dismissed**.

The petition under 37 C.F.R. §1.137(a) is **dismissed**.

The petition under 37 C.F.R. §1.137(b) hereby is **dismissed**.

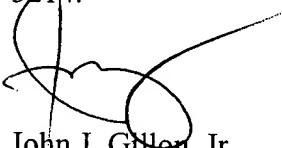
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